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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLEMENT MUNEY; AND CHEF
EXEC SUPPLIERS, LLC,

Appellants,

vs.

DOMINIQUE ARNOULD,

Respondent.

Case No.: 81356

Appeal from the Eighth Judicial District
Court, The Honorable Judge Nancy L.
Allf Presiding.

OPPOSITION TO MOTION FOR STAY PENDING APPEAL

Dominique Arnould, by and through his attorneys of record, Marquis Aurbach Coffing, hereby files his Opposition to Motion for Stay Pending Appeal (“Opposition”). This Opposition is made and based upon the Memorandum of Points and Authorities and the pleadings and papers on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Clement Muney's ("Muney") assertion that he is being evicted is puzzling and in no way involves the matter pending before the district court below. Muney's assertion that a trial readiness check is set for June 18, 2021 is also false. Moreover, the district court below has not even entered an order denying his motion to stay, making his present motion untimely. Even if this Court considers Muney's untimely Motion, it should be denied because Muney cannot meet the threshold requirements for a stay. Muney provides no declaration, no affidavit, and no documentary in support of his instant motion. In a word, the instant motion is nothing but argument of Muney's counsel and should be denied.

Further, Muney's instant appeal turns on the whether the district court erred in entering a June 8, 2020 order appointing a receiver and denying Muney's request for a temporary restraining order.¹ Now, almost a year later, Muney is seeking a stay pending the appeal. The extreme untimeliness of Muney's motion renders a stay impracticable since the previously appointed receiver has already dissolved the company, already distributed the assets, and already concluded his receivership.

¹ See Muney's Opening Brief, on file herein.

In addition, Muney's appeal is moot at this point, as set forth in Arnould's Answering Brief, on file herein. In a word, Muney has already received the benefit of the receiver's distribution of the assets and the district court's order to which he is now appealing. As such, Muney's instant motion should be denied.

II. PROCEDURAL BACKGROUND

Muney's assertion that he is being evicted from his home is puzzling since the matter below does not even involve any eviction proceedings.² Rather, the matter below involves the break-up of two members of a limited liability company and an action for receivership.³

Moreover, Muney's assertion that a trial readiness check scheduled for June 18, 2021 is "soon approaching" is false.⁴ While trial is set in this case, there is a dispositive motion pending that was filed by Arnould which is presently pending before the district court. As such, Muney's stated "urgency" in his motion does not exist.⁵

² See 1 Respondent's Appendix ("RA") at 1, on file herein.

³ 1 RA at 3-4

⁴ See Minute Order Continuing Trial Readiness Hearing, attached hereto as **Exhibit A**.

⁵ See Mot. for Stay of Dist. Ct. Proceedings Pending Appeal, at p. at 1, on file herein.

Muney is correct that on June 9, 2021, the district court held a hearing wherein it denied Muney's motion to stay pending appeal in the district court proceedings. The district court delivered her reasoning stating that he failed to meet the requirements of a stay pursuant to NRAP 8(c). However, an order officially denying the stay has not yet been entered by the Court.

III. FACTUAL BACKGROUND

On October 11, 2019, Arnould filed a Complaint seeking the judicial dissolution of Defendant Chef Exec Suppliers, LLC (the "Company").⁶ The Complaint also sought the appointment of a receiver, declaratory relief, accounting, and breach of fiduciary duty against Muney.

Since then, the Company has already been dissolved by the district court's appointed receiver, and the assets have since been distributed.⁷ As such, most, if not all, of Arnould's claims have already been adjudicated in his favor.⁸

Any remaining claims that have not been resolved by the parties are ripe for dismissal or judgment as a matter of law pursuant to Nev. R. Civ. P. 56(a). Thus, based upon what has already transpired and been adjudicated in this case, there is no basis to stay the trial proceedings.

⁶ 1 RA at 3-4

⁷ 1 Appellant's Appendix ("AA"), at 12-16.

⁸ *Id.*

IV. LEGAL ARGUMENT

In deciding whether to issue a stay, the Nevada Supreme Court generally considers: (1) whether the object of the appeal or writ petition will be defeated if the stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition. NRAP 8(c); *Hansen v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 116 Nev. 650, 6 P.3d 982 (2000).

Here, as a threshold matter, Muney failed to provide any facts or authorities in support of his motion.⁹ This Court need not consider Muney's "conclusory arguments, [that are] lacking substantive citation to relevant authority." *SIIS v. Buckley*, 100 Nev. 376, 382, 682 P.2d 1387, 1390 (1984). A motion for stay must include the reasons for granting the relief requested and the facts relied on; originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and relevant parts of the record. NRAP 8(2)(B)(i)-(iii). Here, Muney has failed to provide any facts in support of his request.¹⁰ Thus, his motion should

⁹ See generally, Mot. for Stay of Dist. Ct. Proceedings Pending Appeal, on file herein.

¹⁰ *Id.*

be denied on its face as it fails to provide any facts or authorities in support of his motion.

Further, the untimeliness of Muney's motion renders a stay impracticable since the previously appointed receiver has already dissolved the company, already distributed the assets, and already concluded his receivership.¹¹ Muney even admits in his instant motion that since the assets are now distributed by the receiver, neither party "suffering from any delay..."¹² In other words, Muney's reason for delay only further supports the fact that the object of Muney's appeal will not be defeated if the stay is denied. *See* NRAP 8(c); *see also Hansen*, 116 Nev., 6 P.3d.

In addition, Muney will not incur any harm by denial of a stay, conversely, he has already reaped the rewards of the continued proceedings and asset distribution during the receivership.¹³ Specifically, Muney obtained \$167,843.95 worth of inventory distributed by the receiver.¹⁴ Indeed, if the Court's decision to

¹¹ 1 AA at 12-16.

¹² Mot. for Stay of Dist. Ct. Proceedings Pending Appeal, at p. 12-13.

¹³ 1 RA at 235-236.

¹⁴ *Id.*

appoint a receiver is reversed, then Muney will likely have to turn the inventory back to the now dissolved Company.¹⁵

In sum, there is simply no basis to stay these proceedings since (1) the object of the appeal will be defeated if the stay is denied; (2) Muney will not suffer irreparable or serious injury if the stay is denied; and (3) Muney is not likely to prevail on the merits in the appeal. If any of these factors were present, Muney should have brought their Motion in June 2020 when a receiver was appointed.

V. CONCLUSION

In light of the foregoing, Muney's motion should be denied.

Dated this 16th day of June, 2021.

MARQUIS AURBACH COFFING

By /s/ Alexander K. Calaway
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¹⁵ *Cotter on behalf of Reading Int'l, Inc. v. Kane*, 136 Nev. Adv. Op. 63, 473 P.3d 451, 455 (2020) (a corporation defendant cannot oppose the merits of a derivative action).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSITION TO MOTION TO STAY PENDING APPEAL** was filed electronically with the Nevada Supreme Court on the 16th day of June, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Robert Kern, Esq.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

/s/ Marie Jorczak _____
Leah Dell, an employee of
Marquis Aurbach Coffing

EXHIBIT 1

EXHIBIT 1

A-19-803488-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NRS Chapters 78-89

COURT MINUTES

June 04, 2021

A-19-803488-B Dominique Arnould, Plaintiff(s)
vs.
Clement Muney, Defendant(s)

June 04, 2021

3:00 AM

Minute Order

**Minute Order:
Continuance of
matter set on June 17,
2021**

HEARD BY: Allf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Due to Court's unavailability on June 17, 2021, COURT ORDERS Status Check: Trial Readiness
CONTINUED to June 18, 2021 at 9:30 a.m.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt,
to all registered parties for Odyssey File & Serve. /nm 6/4/2021.

PRINT DATE: 06/04/2021

Page 1 of 1

Minutes Date: June 04, 2021